

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Donna Griswold,

Petitioner-Appellant,

v.

City of Clinton Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-102-0662
Parcel No. 0850/88-1231-0054**

On April 13, 2010, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Donna Griswold, was represented by Attorney Gary Rolfes of Mayer, Lonergan and Rolfes, and submitted evidence in support of her petition. The City of Clinton Board of Review designated Attorney Drew Chambers of Holleran, Shaw, Murphy and Stoutner as its legal representation, and submitted evidence in support of its decision. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Donna Griswold is the owner of a residentially classified, single-family property located at 871 Pheasant Ridge Road, Clinton, Iowa. The property is a one-story, full brick home and features 2772 square feet of total living area, built in 2005. The property features a full, unfinished, walkout basement, a three-car attached garage, and large (611 square-foot) open porch at the rear.

Griswold protested to the City of Clinton Board of Review regarding the 2009 assessment for her parcel. The protest was based on five of the six available grounds: 1) The assessment is not

equitable as compared with assessments of other like properties under Iowa Code section 441.37(1)(a); 2) the property is assessed for more than the value authorized by law under section 441.37(1)(b); 3) there is an error in the assessment under section 441.37(1)(d); (4) there is fraud in the assessment under section 441.37(1)(e); and 5) there has been a downward change in the value since the last assessment under sections 441.37(1) and 441.35(3). The Board of Review denied the protest in its entirety, but failed to state a reason for the denial. The Board simply stated "sustain the value." We note this is not a reason, but rather an action.

Griswold then appealed to this Board marking only the ground of equity. Griswold also asserted within the appeal to this Board the correct value of the property was \$335,000, and offered an appraisal in support of that position. Both parties made arguments regarding the market value of the property. At the time of hearing it appeared as if the only ground was equity. However, given Griswold's plain language and evidence provided to support her position, both grounds having been protested at the Board of Review, and both parties making arguments regarding the market value; the grounds of equity and over-assessment are considered by this Board.

Griswold offered an appraisal by Thomas R. Van Buer, a certified appraiser with Jacobs Appraisal Service. While the appraisal was completed for purposes of protesting ad valorem valuation, the appraisal's effective date is June 12, 2009. However, Van Buer testified the value was reflective of the January 1, 2009, assessment, which is the focus of this appeal. Additionally, it is noted that all of the comparables presented for analysis occurred in 2008 prior to January 1, 2009.

The appraisal includes four sales from 2008, with a pre-adjusted sales price range of \$285,000 to \$419,000. Sale four offered by Van Buer sets the upper end of this range. We do not consider this a reasonable comparable, even with adjustments, as it has 4072 square feet of living area compared to the subject's 2772 square feet of living area.

After adjustments, the four comparables indicate a range of value of roughly \$303,000 to \$345,000. We find this to be a rather broad range with two sales at the very low end and two sales at the very high end. Sale four adjusts at the high end of this range. Since we do not consider sale four to be comparable in size, this leaves only one sale at the upper end, and two at the lower end. Van Buer concludes a final opinion of \$335,000 from this range, citing "sale #1" as the most similar to the subject. Sale one had an adjusted value of \$343,700.

Due to limited sales data in the immediate vicinity of the subject, all of the comparables presented in the appraisal are located roughly three to four miles from the subject property's subdivision. All are two-story homes compared to the one-story design of the subject property. Van Buer did not develop the cost or income approaches to value, and gave all consideration to the sales comparison approach.

Van Buer remarked in his report that the cost approach was not developed "per clients request as cost to build does not equal market value." However, Van Buer testified on the record that the decision not to develop the cost approach was his. He also testified that, in his opinion, the subject property is an over-improvement despite this not being identified in his report. While Van Buer did not meet all of the reporting requirements associated with an appraisal completed for ad valorem tax purposes, the overall methodology is considered to be reasonable and it is the only piece of evidence submitted that concludes an opinion of market value. While the comparables in the appraisal are of different design, three of the four do offer similar overall gross living area (GLA), room count, and amenities. Additionally, these three sales are the most recent 2008 sales all occurring, more or less, in the fourth quarter of the year.

City Assessor John Moreland testified on behalf of the Board of Review. Mr. Moreland stated the cost approach was considered the best approach to value; however, the market approach was also considered. Moreland testified he used the Iowa Real Property Appraisal Manual to develop the value

for the subject property. The Board of Review pointed out the initial construction costs of the subject property, in 2004, was estimated to be \$375,000, not including a fence, which was added later, for \$4000. Moreland indicated he did not believe the cost of the subject property exceeds market value. While Moreland testified the market approach was considered; and he does not believe in this instance cost is greater than market value, we note that the Board of Review did not supply any market evidence in support of this position.

In addition to the appraisal, Griswold also offered a second exhibit. This exhibit, while offered to this Board by Griswold, was created and presented to the Board of Review by Moreland and included within the certified record. It is a spreadsheet of properties located in Griswold's development and provides the address, age, style, garage, total square feet of living area, basement finish, plumbing count, sale date and sale price (if applicable), and 2009 assessed value which is reported as "new value." This spreadsheet contains two vacant land sales and twelve improved properties, including Griswold's.

It is unclear exactly what the assessor or Board of Review intended for this exhibit to demonstrate. Seven of the properties have sold; but the most recent sale occurred in 2004 with the next most recent being in 2002. There is not enough information to determine whether the properties are equitably assessed for the 2009 assessment; nor is there any indication of market value inferred from this data. The highest sale occurred in 2002 for \$240,000.

The assessed values of these properties range from \$242,201 to \$502,492. We find the high end of this range is an outlier, as it has more finished basement area than main living area apparently due to the garage having a full finished basement as well. Removing that property the range shifts from \$242,201 to \$376,570, with the upper end now being set by the subject property itself. Removing the subject property, the remaining ten improved properties have a 2009 assessment range of \$242,201

to \$319,940 with an average of roughly \$284,000. This seems to indicate the subject is somehow not like the other properties in the immediate development, and perhaps over-built for the area.

We also find additional concerns relating to the certified record and minutes of the Board of Reviews decisions regarding the subject property. When Griswold petitioned to the Board of Review, she marked the box “yes” indicating an oral hearing was requested. According to the minutes and testimony provided, the Board of Review inspected Griswold’s property on May 7, 2009. Griswold testified that in fact the Board of Review had visited her property on that date, but the visit was “hurried” and she had no meaningful conversation with any Board of Review members. The May 11, 2009, Board minutes indicate that it was moved and seconded to “sustain the current value” of Griswold’s property. Again, we note this motion represents an action by the Board of Review, but does not provide any rationale for that action.

Board of Review minutes on May 20, 2009, indicate Griswold and her Attorney appeared before it. Griswold provided the Board of Review with a photo album of all the houses in her subdivision. At this time, Moreland also provided the aforementioned spreadsheet to the Board of Review. Later the same day, a second motion was made by the Board of Review to again, “sustain the current value.”

When Moreland was questioned about Griswold not having an oral hearing when the first decision to deny was made, he indicated that “checking the box doesn’t mean you want an oral hearing, but rather an inspection.” We do not consider this reasonable. The form clearly asks if an oral hearing is requested, requiring a taxpayer to check either yes or no. The form does not ask if an inspection is requested. If the Board of Review has a practice of inspecting some or all of the properties that come before them on appeal, that inspection should not be interpreted to be in lieu of an oral hearing when one has been requested on the petition form.

While no evidence was presented by either party regarding equity, based upon the foregoing the Appeal Board finds a preponderance of the evidence, particularly Van Beur's appraisal, supports Griswold's claim that her property is assessed at greater than market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the*

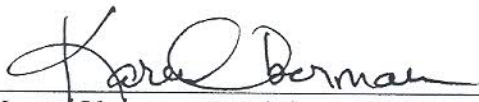
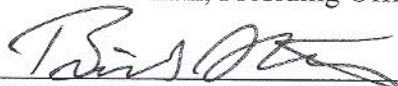
City of Davenport, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). Neither party presented evidence or argument in regards to the claim of inequity in the assessment.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Griswold provided an appraisal with sales that would have been considered for a January 1, 2009, assessment and supporting an opinion of value of \$335,000 for the subject property. While there is no presumption the assessment is correct; equally there is no presumption it is incorrect. Iowa Code § 441.37A(2)(b). However, the Board of Review has failed to offer any support for the current market value of the subject property and we find sufficient evidence has been submitted by Griswold to support the claim that her property is assessed at greater than market value.

THE APPEAL BOARD ORDERS that Donna Griswold's property assessment be modified. Parcel number 0850/88-1231-0054, located at 871 Pheasant Ridge Road, Clinton, Iowa, is modified to a total value of \$335,000; representing \$53,840 in land value and \$281,160 to the improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Clinton County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 18 day of May, 2010


Karen Oberman, Presiding Officer

Richard Stradley, Board Member

Cc:

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CLINTON COUNTY AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-18</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	